IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION FOUR

Civ. No. B 069450
(Super. Ct. No. BC 052395)

CHURCH OF SCIENTOLOGY INTERNATIONAL,

Plaintiff-Respondent

-vs-

GERALD ARMSTRONG,

Defendant-Appellant.

On Appeal From Superior Court Of The State Of California
County of Los Angeles
The Honorable Ronald M. Sohigian

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

> **"Speaking of that mortgage, mister," said Jabez Stone, and he looked around for help to the earth and the sky, "I'm beginning to have one or two doubts about it."**
>
> **"Doubts?" said the stranger not quite so pleasantly.**
>
> **"Why, yes," said Jabez Stone. "This being the U.S.A. and me always having been a religious man." He cleared his throat and got bolder. "Yes sir," he said, "I'm beginning to have considerable doubts as to that mortgage holding in court."**
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> **- - from "The Devil and Daniel Webster" by Stephen Vincent Benet**

It is not only the soul of appellant Armstrong Scientology seeks but also that of Lady Justice and anyone foolish enough to become an adverse Scientology litigant. The **"mortgage"** in this instance is a "contract" designed to make it impossible, or at least more difficult and expensive, for an adverse Scientology litigant to prosecute or defend himself against this judicially declared litigious organization. [1]/ Appellant, as have many other knowledgeable ex-Scientologists, [2]/ has been required, pursuant to settlement contract, to not attend any trial, sign declarations, or be interviewed on behalf of any adverse Scientology litigant. Further, appellant is not to be "amenable" to service of process and is to cooperate in secreting certain incriminating tape recordings from Federal prosecutors.

This case is of enormous importance to the future of

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[1] Scientology's litigious history can be confirmed by a Ceris, Lexis or WestLaw scan.

[2] Scientology describes a series of such settlements with former members as a "Global" Settlement (667).

litigation in this state. We submit that if this contract were to be held enforceable, it would only be a short time before all defendants, especially those faced with multiple litigation, start placing similar language routinely in settlement agreements. If that occurs, then we might as well hang a signover the courthouse that says **"Abandon all hope ye who enter..."** [3]/

Prior to discussing the practical and legal meaning of the public policy considerations in this case, Armstrong will first address the factual inaccuracies that Scientology seeks to insinuate into the record. As an additional preliminary matter, Armstrong will also discuss the proper standard of review which applies to a mandatory injunction.

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[3] Scientology may assert this pronouncement is dramatic. But appellate courts who have reviewed Scientology policies of "Fair Game (destroy enemies)," kidnapping, espionage, obstruction of justice, tax evasion, and other crimes, would most likely disagree. Church of Scientology v. Commissioner of Internal Revenue (1984) 83 T.C. 381, 124 Misc.2d 720, aff'd, 823 F.2d 1310 (9th Cir. 1987); Church of Scientology of California v. Commissioner of Internal Revenue, (1987) 823 F.2d 1310; In Re Search Warrant, 572 F.2d 321; United States v. Heldt, 668 F.2d 1238, cert. denied (1982) 102 S.Ct 1971; United States v. Hubbard, 493 F.Supp. 209; Allard v. Church of Scientology (1976) 58 Cal.App.3d 459, 444; Christofferson v. Church of Scientology, 644 P.2d 577; Wollersheim v. Church of Scientology of California, (1989) 212 Cal.App.3d 872, 880, 888-89; Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1067

Indeed, Judge Sohigian, author of the injunction, noted Scientology's behavior is a "deviation" from "standards of ordinary...honest behavior...makes you sort of be sure you cut the deck and be sure you've counted all the cards . . .." (1701) Armstrong's information involved "abusing people who are weak ... taking advantage of people . . . using techniques of coercion." Such information was "meritorious in the extreme." (1700)

II. SCIENTOLOGY'S ARGUMENT THAT MR. ARMSTRONG AGREED TO SACRIFICE HIS GOOD NAME AND REPUTATION FOR MONEY IS A LIE THAT IS BASED UPON THE MUTUALLY EXCLUSIVE DECLARATIONS OF ITS ATTORNEY, LAWRENCE E. HELLER.

Each of Scientology's arguments set forth in its Respondent's Brief ("RB") shares a factual predicate in common. Therefore, if that shared predicate is erroneous, so is the argument based thereon. The erroneous factual predicate is that Scientology and Armstrong specifically negotiated and bargained for Scientology's right to unilaterally slander Armstrong in the face of which he was to waive his First Amendment right to free speech and remain mute. [4] Armstrong never agreed to sell his name, reputation and the truth for the modern day equivalent of 30 pieces of silver. To a man of integrity, such intangibles are priceless.

The perversity of Scientology's claim that the man, who fought Scientology from inside the organization in an effort to persuade it to tell the truth about L. Ron Hubbard and itself (485-490), is on "an obsessive crusade" (RB 17) is exceeded only by how thoroughly it has spread similarly feculent characterizations of Armstrong throughout its brief. [5]

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[4] See RB at pp. 5-7, fn. 7 at p. 7,

[5] In start contrast, Judge Breckenridge characterized Mr. Armstrong quite differently when deciding in his favor when Scientology first sued him in Armstrong I. He specifically found Armstrong's testimony "to be credible, extremely persuasive." (473) He also said:

(continued...)

Indeed, Scientology's characterizations culminate in the conclusion that Mr. Armstrong intentionally waived his constitutionally protected right to his good name and reputation and to speak out to refute slander thereon. Leading up to this conclusion Scientology indulges in casting a hail of aspersions on Armstrong that are factually groundless. The actual facts are to the contrary. [6]/ Therefore, the truth belies Scientology's

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[5](...continued)
"While defendant has asserted various theories of defense, the basic thrust of his testimony is that he did what he did, because he believed that his life, physical and mental well being, as well as that of his wife were threatened because the organization was aware of what he knew about the life of LRH, the secret machinations and financial activities of the Church, and his dedication to the truth. He believed the only way he could defend himself, physically as well as from harassing lawsuits, was to take from Omar Garrison those materials which would support and corroborate everything that he had been saying within the Church about LRH, or refute the allegations made against him in the April 22 Suppressive Person Declare." (471)

[6] Scientology claims Armstrong to hold "obviously prejudiced views about L. Ron Hubbard" (RB at fn 4, p. 5) yet ignores the fact that Judge Breckenridge specifically found that L. Ron Hubbard was "a man who has been virtually a pathological liar when it comes to his history, background and achievements . . . [manifesting] egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against person perceived by him to be disloyal or hostile." (474-475).

Scientology says that Armstrong makes "false and distorted claims about a non-existent 'fair game' policy" (RB at fn. 4, p. 5), but disregards the fact that this Court, not to mention Judge Breckenridge in Armstrong I, has found otherwise. Judge Breckenridge found that Scientology "violat[ed] and abus[ed] its own members' civil rights, . . . with its "Fair Game" doctrine [and] harass[ed] and abuse[ed] those persons not in the Church whom it perceive[d] as enemies" (474) and that Armstrong had been the subject of a "Suppressive Person Declare" which charged him with "Crimes and High Crimes and Suppressive Acts Against the Church." (491) "The charges included theft, juggling accounts, (continued...)

shallow assertions that Armstrong holds "wholly negative attitudes and claims about Scientology practices." (RB at fn. 4, p. 5) Such is false, defamatory and undeserved. Scientology's baseless attempt to inflame prejudice against Armstrong is similarly exposed when one looks at its claim that he has engaged "in vitriolic public attacks on the Church and had . . . stirred up unwarranted [and by respondents unidentified] litigation against the Church." (RB at p. 6)

Scientology's argument that while it is entitled to slander Armstrong [7] in order to "correct the record," Armstrong must remain mute is factually predicated on the declaration of

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[6](...continued)
obtaining loans on money under false pretenses, promulgating false information about the Church, its founder and members, and other untruthful allegations designed to make Defendant Armstrong an appropriate subject of the Scientology 'Fair Game Doctrine.' Said Doctrine allows any suppressive person to be 'tricked, cheated, lied to, sued, or destroyed." (491) See also Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1067; Wollersheim v. Church of Scientology (1989) 212 Cal.App.3d 872, 787, 888-89, pet. for cert. granted, vacated and remanded on other grounds, 111 S.Ct. 1298 (1991); aff'd on remand 4 Cal.App.4th 1074 (1992); review granted S011790 (1992) (on punitive damages issue) [Fair Game is Scientology's practice of retribution against members who posed a threat to the organization]; Allard v. Church of Scientology (1976) 58 Cal.App.3d 439, 444 [former church member falsely accused by Church of grand theft as part of "fair game" policy, subjecting member to arrest and imprisonment].

[7] Scientology appears constitutionally incapable of telling or admitting the truth. For example, despite the thoughtfulness of and detail used in Judge Breckenridge's opinion in Armstrong I, appellate counsel argues "Since the Church considered Armstrong's prior [sworn] statements to be false and defamatory, the Church necessarily required the freedom in the future to communicate about the various false statements Armstrong had made. (92)" (RB at p. 7.)

Scientology attorney Lawrence E. Heller. (90-92) Mr. Heller, however, is a liar.

On November 1, 1989, Lawrence E. Heller, an officer of the court, attempted to prevent Bent Corydon author of L. Ron Hubbard, Madman or Messiah?, from taking the deposition of Gerald Armstrong. Heller stated "One of the key ingredients to completing these agreements, insisted upon by all parties involved, was strict confidentiality respecting: . . . (2) any knowledge possessed by the Scientology entities concerning those staff members . . .." (1297:9-14; original emphasis) Also, in his declaration dated November 1, 1989, Heller stated ". . . a 'universal settlement' was ultimately entered into between numerous parties. The universal settlement provided for non-disclosure of all facts underlying the litigation as well as non-disclosure of the terms of the settlements themselves. **The non-disclosure obligations were a key part of the settlement agreements insisted upon by all parties involved.**" (1302:1-7; original emphasis)

In its response brief, Scientology completely disregards and has ignored, as it must, the foregoing statements of its long-standing attorney quoted in the Appellant's Opening Brief at p. 15. [8]/

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[8] Scientology has never ceased to manifest that character trait that Judge Breckenridge observed in Mary Sue Hubbard, L. Ron's wife whose "credibility leaves much to be desired. She struck a familiar pose of not seeing, hearing, or knowing any evil." (475-476)

It could not do otherwise because in the same "legal" document submitted to this Court it could not assert the mutually exclusive proposition that part of the "universal settlement" deal was that Scientology could "dead agent" Armstrong by slander and calumny to which he could never respond. [9] Or if he did respond, he would be sued without his knowledgeable attorney, Michael Flynn, whom Scientology has contracted away.

Further, in addition to Heller's sworn lies, and in light of the history and nature of Armstrong's principled stand against the deception and abuse routinely practiced by the Scientology organization on one hand, and the order by Judge Breckenridge that Armstrong was "free to speak or communicate upon any of [his] recollections of his life as a Scientologist or the contents of any exhibit received in evidence," Scientology's claim that it "retained the right to attempt to counteract the false light in which [Armstrong's] statements have placed [it]" (RB at fn. 7, p. 7) is preposterous and foolish. Armstrong did not agree to become a punching bag for Scientology's defamatory statements that he was a liar, a thief, or an agent provocateur of the Internal Revenue Service. See Opening Brief at pp. 13-16.

To require Armstrong to lie down and roll over while Scientology engages in a frenzy of reputational stomping is not

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[9] Judge Breckenridge noted Scientology's penchant for one-sided legal contests (while at the same time grousing about the absence, to its claimed detriment, of a "level playing field") when he said that "rights, however, cannot be used by the Church or its members, as a sword to preclude defendant, whom the Church is suing, from defending himself." (473)

fair to him. Thus, it fails to satisfy the requirement that as to Armstrong the contract to be specifically enforced by an injunction must be fair and just, rather than harsh and oppressive. See Opening Brief at pp. 41-42. [10]/

Were this Court to uphold the trial court's preliminary injunction, it would sanction Scientology's position that it can assassinate Armstrong's reputation with impunity, as well as use the judicially enforced silencing of Armstrong to suppress evidence of its own wrongdoing against other individuals and institutions.

III. ALTHOUGH PROHIBITORY IN FORM, THE INJUNCTION IS MANDATORY IN EFFECT WHICH REQUIRES A STRICTER STANDARD OF REVIEW THAN IF IT WERE TRULY PROHIBITORY

> "The granting of a mandatory injunction pending the trial, and before the rights of the parties in the subject matter which the injunction is designed to affect have been definitely ascertained by the chancellor, is not permitted except in extreme cases where the right thereto is clearly established and it appears that irreparable injury will flow from its refusal."

Hagen v. Beth (1897) 118 Cal. 330, 331.

In the instant case, both Armstrong, the public and private plaintiff litigants have sustained the irreparable harm, not Scientology.

"An injunction may be mandatory in effect, . . . even though

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[10] Scientology appears to attempt to circumvent this requirement by flatly stating an injunction is an appropriate remedy to restrain one from breaching a promise not to do a particular thing.

it is only prohibitory in form." 6 Witkin, California Procedure, Provisional Remedies, § 243, p. 212. If an "injunction compels a party affirmatively to surrender a position which he holds and which upon the facts alleged by him he is entitled to hold, it is mandatory." Pomin v. Superior Court (1941) 44 Cal.App.2d 206, 210, 112 P.2d 17, 19; City of Pasadena v. City of Alhambra (1946) 75 Cal.App.2d 91, 170 P.2d 499. The Court "must examine the terms and effect of the injunction in order to discover its character. Feinberg v. One Doe Co. 14 Cal.2d 24, 28, 92 P.2d 640.) [¶] The purpose of mandatory relief is to compel the performance of a substantive act or a change in the relative positions of the parties. (Mark v. Superior Court 129 Cal. 1, 6-7, ...)" (emphasis added.) People v. Mobile Magic Sales, Inc. (1979) 96 Cal.App.3d 1, 13, 157 Cal.Rptr. 749.

One of the illegal components of the contract was that it required Armstrong to take a dive on Scientology's appeal of Judge Breckenridge's opinion in Church of Scientology of California v. Armstrong, LASC Case No. C 420 153, through the provisions of paragraph 4-B which required Armstrong not to oppose such appeals. [11]/ In February 1990 Armstrong advised

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[11] Paragraph 4-B of the contract states: "As of the date of this settlement Agreement is executed, there is currently an **appeal pending** before the California Court of Appeal, Second Appellate District, Division 3, arising out of the above referenced action delineated as **Appeal No. B005912.** It is understood that this appeal arises out of the Church of Scientology's complaint against plaintiff which is not settled herein. This appeal shall be maintained notwithstanding this Agreement. Plaintiff agrees to waive any rights he may have to (continued...)

the Court of Appeal of this provision and requested permission to participate in Scientology's appeal of his case. (Exhibit A to Request for Judicial Notice filed herein.) In March, 1990, Armstrong filed a declaration in the Court of Appeal the content of which specifically violated the settlement contract which at that time Armstrong stated was unenforceable. (1106-29) [12]/ In December 1990, Armstrong filed another declaration in the Court of Appeal in which he made additional reference to matters prohibited by the settlement contract. (Exhibit B to Request for Judicial Notice filed herein.) [13]/ In July, 1991, Armstrong assisted Joseph A. Yanny and provided him two declarations for use. (125-34, 136-38) In August 1991 Armstrong commenced working for Ford Greene on, inter alia, cases against Scientology in one of which he filed a certain declaration. (147-57) On May

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[11](...continued)
take any further appeals from any decision eventually reached by the Court of Appeal or any rights he may have to oppose (by responding brief or any other means) any further appeals taken by the Church of Scientology of California. The Church of Scientology of California shall have the right to file any further appeals it deems necessary. [Emphases added.]" (75-76)

[12] Scientology would no doubt find the following language of Armstrong's March 15, 1990, declaration to violate its settlement contract: "While working on a project for Mr. Hubbard I acquired the knowledge that millions of dollars of organization money had been channeled into his accounts." (1113 at ¶ 19.)

[13] Among other things, Mr. Armstrong stated: "The legal battle waged by the organization was abusive, menacing and debilitative. The organization sued Mr. Flynn or his firm many times, filed countless false sworn declarations about Mr. Flynn and me, and attempted to frame both of us and bring false criminal charges against us." (Exhibit B to Request for Judicial Notice filed herein at p. 1, ¶ 2 thereof.)

27, 1992, Armstrong executed a declaration in Religious Technology Center v. Scott, U.S. District Court, Central District of Los Angeles, CV 85-711 JMA (Bx). When the injunction issued on May 28 1992, the status quo was that Armstrong was acting as a normal citizen inasmuch as he was gainfully employed and was speaking out against injustice and providing sworn testimony in that regard.

In Pomin, the court of appeal reviewed a judgment of contempt. In that case, the defendant had been enjoined not to interfere with plaintiff's easement. Prior to the injunction, and prior to the litigation from which it issued, a truck resting not on wheels but on blocks had been placed across the easement sought to be enforced, completely closing the road. As the Court of Appeal noted,

> "The road was completely closed prior to the litigation, and to maintain the status quo, no prohibitory injunction was required, nor could one be enforced pending the appeal, for to do so would change the relative rights of the parties. If the roadway had been clear and open to travel prior to the action, a prohibitory injunction would have been proper, as it would be then in furtherance of preserving the litigation in statu quo."

Pomin, 112 P.2d at 19.

In the case at bar, Armstrong's status at the inception of this litigation was that for over two years he had not been complying with provisions of the contract which he believed were illegal and violative of public policy. (1106-1129)

Therefore, the issuance of the injunction changed his status, and by such change is properly placed in the category of

being a mandatory injunction.

In Youngblood v. Wilcox (1989) 207 Cal.App.3d 1368, 1372, fn. 1, the Court of Appeal found that an injunction preventing a country club from denying access to the Youngbloods after the revocation of their membership to be mandatory but in an incidental way, and nonetheless deemed the injunction prohibitory. This is different from Armstrong's case where the provisions of Scientology's contract which violate public policy have been enforced by an injunction to strip him of his right to act as a normal citizen who enjoys the exercise of basic and fundamental constitutional rights, and where for in excess of two years prior to the commencement of litigation had been enjoying the exercise of such rights.

IV. THE CONTRACT, THUS THE INJUNCTION, VIOLATES PUBLIC POLICY

A. The Injunction

The subject injunction granted very little of what Scientology requested, denying the majority of what was contained in the subject settlement agreement due to public policy.

As Scientology acknowledges (RB 11) Armstrong is only enjoined from assisting or voluntarily testifying for a non-governmental plaintiff in Scientology related litigation. (1715)

[14]/ The remainder of the agreement was not enforced. [15]/

Judge Schigian applied a "balancing" test (1716) weighing public policy of justice against the policy of enforcing settlements, apparently believing that Scientology was entitled to a limited intrusion into Justice. Judge Sohigian apparently believed there was less public value in a plaintiff presenting charges than in a defendant defending.

This was error. The courts have universally refused to enforce settlements when they violate public policy. The public is served by truth-finding, not by hindering "Plaintiffs." Further, when a contract has an evil intent, courts will not rewrite in order to grant some relief. [16]/

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[14] We contend the injunction also violates public policy, and further, that the Court may not rewrite a contract in order to sanitize it, thus ignoring its evil purpose.

[15] See agreement (72-87) paragraph 7-D (prohibits revealing experiences relating to Scientology); paragraph 7-E (voluntarily assisting or cooperating with any person adverse to Scientology...nor cooperating in any manner with any organizations "aligned" against Scientology); 7-H (not be "amenable" to service the "subpoena"); 7-I (not use any evidence developed in litigation in future litigation); paragraph 10 [not assist individuals, associations, **or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interest of any entity or class of person listed above in paragraph 1 (all Scientology's agents, officers, associates, individuals, etc.)**]; paragraph 18-D (not disclose contents of agreement; provision to keep tape recordings re: tax fraud from department of justice (see United States v. Zolin (9th Cir. 1987) 809 F. 2nd 1441; United States v. Zolin (1989) 109 S.Ct. 2619; United States v. Zolin (9th Cir. 1990) 905 F.2d 1344, 1345. (Scientology subject to crime fraud exception to attorney\client privilege).

[16] Judge Sohigian noted "plaintiff was substantially compensated . . . " (RB 11) But what compensation did the public (continued...)

B. Scientology's History Of The Case Is Inaccurate

Appellant (RB 2-17) sets forth the accurate factual history. We note Scientology does not challenge any of the same, but, as set forth above, merely places a "different" and "incorrect" story before this court. [17]/

Scientology claims the settlement agreement restrains Armstrong from voluntarily aiding others in litigation, speaking to others, returning documents, keeping the agreement confidential. (RB 3)

Actually, the contract calls for Armstrong to avoid subpoena, help secrete incriminating tapes reflecting Scientology's tax evasion from the Justice Department (discussed in the Zolin trilogy), and to not file any opposition to Scientology's appeal of the underlying litigation. Scientology's

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[16](...continued)
receive for losing the truth and ability to fight the Scientology litigation machine?

In his work Equity Jurisprudence (4th Ed. 1918) Sec. 397 at 738, Professor Pomeroy stated regarding the rule voiding contracts that violate public policy:

"This rule is not generally applied to secure justice between parties who have made an illegal contract, but from regard for a **higher interest** -- that of the **public**, whose welfare demands that certain transactions be discouraged."

[17] The Court is respectfully referred to Part III, above, for Armstrong's contrasting of what Scientology claims to be factual and what courts have found to be so.

It is Scientology's ability to coldly "lie" in the face of truth, whether in public or in litigation, that creates potential for public injury from the "global" agreements to keep knowledgeable ex-Scientology silent.

"facts" ignore its "side agreements" wherein it agreed if Scientology won the appeal of Judge Breckenridge's opinion, and retried its case against Armstrong, it would limit its request for damages to $25,001.00, reimbursing Armstrong by paying back the $25,000 through his attorney Michael Flynn. (1255-56) [18]/

Scientology even characterizes Armstrong's cross complaint as one for fraud and emotional distress arising out of his involvement with Scientology. (RB 6) In fact, it was arising out of his post-Scientology period following Scientology declaring him as a suppressive and subjecting him to "Fair Game." (490-93, 1053)

Scientology admits there was a series of separate agreements to the subject contract (Opening Brief at p. 6) relating to Scientology's retrial following a hopefully non-opposed victory on appeal of the denial of its complaint. It claims these agreements were just to limit the claim to **"nominal damages."** One continues to be amazed not only at Scientology's hubris, but

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[18] Scientology is not timid when it comes to stretching the truth. In footnote 3, RB 3, it states the agreement's **sealing** order was upheld by this court in Church of Scientology of California vs. Armstrong, supra. First, while the sealing order was pursuant to agreement, it was not the herein subject agreement as it was never given to the court (1258). Second, the Appellate Court held that the "challenge" was **correct**, the sealing order should never have been issued, but ruled the Superior Court no longer had the authority to set it aside as the six months time limitation of CCP 473 had expired (although it did allow interested adverse Scientology litigants to see the file). This is hardly the "rejected" challenge Scientology suggests. We also suggest the Appellate Court erred. As the public would not have notice the order was ever made, the public should not be limited to the CCP 473 six month limitation to move to set it aside.

at its raw ability to make such statements. First, the subject agreement calls for Armstrong not to oppose the appeal (¶¶ 4-A and 4-B at 75-76). The "separate agreements", which Armstrong was not even aware of (712-15; 771-72; 1253-56), set him up for a public relations fall, with secret reimbursements. [19]/

Scientology states the settlement contract was necessary because Armstrong "stirred up unwarranted litigation" against Scientology (RB 6). Scientology fails to state which litigation was unwarranted. Was it Wollersheim vs. Scientology, supra, where the jury, upheld by the appellate court, found Scientology abused its own members with policies of fair game, Freeloader Debt (money owed if you ever leave Scientology), "shunning" business of suppressives (against Scientology). Or was it Allard, supra, (Scientologists found to have framed a former Scientologist on phony criminal charges). We could go on. [20]/

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[19] If Scientology claims now Armstrong conspired to plant documents, imagine their Public Relations win following the retrial. Fortunately they lost the appeal. Church of Scientology of California v. Armstrong, supra.

Does it support public policy to take up time of appellate courts and trial courts on sham appeals and retrials?

[20] Perhaps Scientology is referring to its allegation that Armstrong "stirred up" governmental prosecution of former Scientologists for tax evasion and obstruction of justice based upon Scientology's own documents seized pursuant to FBI search warrant that revealed covert plans to destroy Scientology enemies, infiltrate government agencies and block proper administration of justice. Church of Scientology of California v. Commissioner of Internal Revenue, supra; In Re Search Warrant, supra; United States vs. Heldt, supra; United States v. Hubbard, supra, and Church of Scientology v. Commissioner of Internal Revenue, supra.

Following settlement, Scientologists have repeatedly sworn

(continued...)

Scientology argues Armstrong entered the agreement freely and knowingly, (RB 7), but the evidence is uncontradicted that he did not have knowledge of the separate agreements which set him up to be disgraced in public by a verdict branding him a thief, following a "rigged" appeal. [21]/ Not even Scientology can deny the existing conflict of interest that existed between Armstrong and his counsel. Not only was Michael Flynn representing multiple other ex-Scientologists who received large sums, only if all agreed, but Flynn himself was a Plaintiff with $1 million earmarked for his separate recovery if everyone signed. (111-116)

On page 8, Scientology takes its swings at attorney Joseph Yanny whom Armstrong had briefly worked for. Scientology goes

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[20](...continued)
Armstrong was an agent of the government who conspired to plant documents within Scientology for the FBI to find as part of an alleged "conspiracy." (1320, 1353-54, 1504, 1549, 1553). And if you believe that one....

When one examines such statements, it becomes easy to see how Judge Breckenridge concluded Scientology "is clearly **schizophrenic** and **paranoid**, and this bizarre combination seems to be the reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar . . ." (474)

[21] Respondent, page 6, footnote 6, states that even if Armstrong's attorneys did not inform him of these agreements, Armstrong has no reason to complain as they are to his benefit. How does he benefit?

That Armstrong will be reimbursed for the rigged judgement against him? This is the type of twisted thinking commented on by both Judge Breckenridge and Judge Sohigian. Scientology thinks it is a benefit to be branded a thief, wrongdoer and agent provocateur. Scientology believes that it is irrelevant that a fraud will take place upon the courts and public. Like those who are mentally ill, Scientology is constitutionally incapable of accepting responsibility for the consequences of its conduct.

beyond the herein record to state that Yanny was removed from the "Aznaran litigation" replacing Ford Greene who later then returned as the Aznarans' counsel. Scientology limits how far they will go beyond the record. They could have added that Yanny came in the litigation because Scientology sent word to the Aznarans that it would settle if the Aznarans fired Ford Greene. After inducing the Aznarans' reliance, Scientology refused to settle and filed over 285 pages of dispositive motions while the Aznarans were left without counsel. Yanny substituted in for the limited purpose of asking the court for more time to respond to said motions, including two for summary judgement. Despite the Aznaran's succumbing to "temptation" Ford Greene graciously returned as counsel.

In footnote 9, Scientology claims it eventually sued Yanny for his breach to fiduciary duties. Again beyond the record. And again limited. Scientology sued Yanny twice. It lost both times. Yanny won his cross complaint for $150,000 against Scientology.

V. SCIENTOLOGY BREACHED THE SUBJECT AGREEMENT

Long before the alleged subject "breaches" by Armstrong, the agreement was breached by Scientology.

A. Scientology Withheld Agreement From The Court

The last paragraph of the agreement (86-87), provides that enforcement will be left with the court in Armstrong I, i.e. Judge Breckenridge and his successors. This had two effects. Armstrong could rely on the court to approve or modify the agreement, providing safeguards concerning its terms. Second, there would be no expensive litigation as has occurred in the case at bar. Either side could move the court, similar to arbitration.

Scientology, despite being ordered by Judge Breckenridge, never provided the settlement contract to the court (1238, 1258), let alone the "separate agreements." (1253-1256) As a result, Armstrong was denied the court's scrutiny of the agreement, and availability to resolve disputes.

In fact, before bringing this litigation, Scientology did seek relief in Armstrong I. Judge Geernaert, having inherited the case, held he had no jurisdiction because Scientology had failed to ever give the contract to Judge Breckenridge, and thus was not subject to any court order. In ruling, Judge Geernaert stated Judge Breckenridge would never have ordered enforcement of such an agreement that thwarted public policy (606). [22]/

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[22] In essence, the contract prohibits this litigation. Scientology should not be allowed to bring it due to its own wrongdoing, i.e., not giving the agreement to Judge Breckenridge as he had ordered.

B. Scientology Attacks Armstrong

Following settlement, Scientology attacked Armstrong. Scientology claims the contract provided they could challenge Armstrong's prior testimony, a necessity due to Armstrong's prior damaging testimony. (RB at fn 7, p. 7)

Scientology, however, went beyond what could be reasonably expected. It did not just challenge Armstrong's testimony, refute it, or claim he was biased. Scientology claimed Armstrong committed **crimes**, i.e. conspired with the federal government. Further, Scientology tried to "frame" Armstrong ("dead agent" in Scientology language Opening Brief at pp. 9-10).

These charges were ludicrous, beyond decency or the conceivable expectations of the parties. More than an answer to testimony, Scientology branded him **falsely** as a criminal. The agreement cannot be construed to deny Armstrong the right to respond to such charges, prove their inaccuracy and his truthfulness.

IV. THE FACT A CONTRACT IS PART OF A SETTLEMENT CONTRACT IS IRRELEVANT WHEN IT VIOLATES PUBLIC POLICY

Scientology argues public policy supports enforcement of "judicially supervised settlements." (RB at p. 13)

The first problem with this argument is that the settlement was not judicially supervised. Not only was the court unaware of

the contents of the various agreements, but Scientology refused to supply the same despite orders to do so (1258; Opening Brief at pp. 12-13).

There is public policy in this state supporting the enforcement of settlement agreements, however, that policy does not apply when a contract violates the public good. [23]/

Scientology cites In Re Franklin National Bank Securities Litigation, 92 F.R.D. 468 (E.D.N.Y. 1981) affirming a "confidentiality order." But the herein case is not about a confidentiality order, which usually regards the amount paid in settlement. Franklin did not include directions not to testify or speak, participate in sham appeals and retrials, and have one's name smeared.

Scientology cites Maryland Casualty Co. vs. Fidelity Casualty Co. New York, (1925) 71 Cal. App. 492 for the proposition that settlement agreements should be construed to render them valid. But this ancient case supports appellant, not respondent.

Maryland noted that public policy is declared by the

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[23] Scientology quotes Matter of Springpark Associates 623 F. 2nd. 1377 (9th Cir.) stating ". . . a litigant can no more repudiate a compromise agreement than he could disown any other binding contractual relationship."

We agree. But just as a litigant can disown any binding contract relationship that violates public policy, so he may "repudiate" a compromise agreement that violates public policy.

legislature [24]/ and the court when a contract is clearly "injurious to the interest of society."

In Maryland, Plaintiff agreed not to disclose medical malpractice in return for indemnity for the excess medical charges that would now be due an injured employee. "There was no attempt to hinder or delay collection on any sum due the injured employee." The agreement ensured to the employee "everything to which he was entitled." Id. at 498.

More important, Maryland approved Eggleston v. Pantages (1918) 103 Wash. 458 where a settlement agreement to withhold a complaint from public files and to "give no information" to anyone concerning the same or the commencement of the suit," thereby preventing **those interested** from learning the true state of facts was a "clear attempt to conceal judicial proceedings and to obstruct justice for the purpose of **wronging others interested. Agreements of this character are clearly against public policy.** " Id. at 439 [25]/

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[24] Our legislature has made it a crime to get a witness to agree to do everything they can to avoid testifying. People v. Dean Richard Pic'l, (1981) 31 Cal.3d 731, 740, 183 Cal. Rptr. 685.

[25] Nor is Moran vs. Harris (1983) 131 Cal.App.3d 913, 182 Cal. Rptr. 519, in accord. This case merely held that an amendment to rules of professional conduct making attorney referral arrangements no longer contrary to public policy removes such charge from the pending litigation. Public policy was defined as **"anything which tends to undermine that sense of security for individual rights...which any citizens ought to feel is against public policy."** Id. at p. 919.

VI. THE SUBJECT AGREEMENT VIOLATES PUBLIC POLICY

Scientology is collaterally estopped to assert the contract is lawful. It first proceeded in Armstrong I to enforce the agreement on December 23, 1992. Judge Geernaert ruled he lacked jurisdiction as the settlement was never given to Judge Breckenridge. He ruled Judge Breckenridge, if asked to approve it would have **"dug his feet in ...we don't want to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest."** (606) [26]/

Judge Geernaert's ruling is correct. In Fong v. Miller, 105 Cal.App.2d 411, 233 P.2d 606 (1951) enforcement of such settlements was denied:

> **"Appellants bitterly complain that the court's action leaves the Respondent unjustly enriched. The complaint is a familiar one, it is generally made by those who, deeming themselves wronged by their companion in illegal ventures, find themselves denied of any right to enforce their unlawful agreements. Their pleas have always been unavailing. This rule is not generally applied to secure justice between parties who have made an illegal contract, but from regard for a higher interest -- that of the public, whose welfare demands that certain transactions be discouraged."**

Id. at pp. 414-415.

And in Tappan v. Albany Brewing Co., 80 Cal. 570:

> **"It was contended by the Respondent that this was nothing more than a payment of a sum of money by way of a compromise of litigation, and that such contracts**

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[26] Brown vs. Rahman, 231 Cal. App. 3rd. 1458, (Rules apply to findings necessary to judgement, and not just the judgement).

> **have been upheld. We do not so construe the agreement. It was a promise to pay...for the concealment of a fact from the court and the parties material to the rights of said parties, and which it was her duty to make known. Such a contract was against public policy..."**

Mary R. v. B. & R. Corporation (1983) 149 Cal.App.3d 308, 196 Cal. Rptr. 871, also invalidated a settlement agreement against public policy. In People v. Dean Richard P'icl, supra, the court approved criminal charges against an attorney who made a settlement agreement requiring a witness to do **"everything within his power not to testify."**

VII. SCIENTOLOGY FAILS TO DISTINGUISH APPELLANT'S CASES

Allen vs. Jordanos (1975) 52 Cal.App.3d 160, 125 Cal.Rptr. 31 also invalidated a settlement agreement. Scientology argues this case is inapplicable (RB 20-21) because it concerns an attempt to work a fraud on a state agency. First, the subject contract herein requires fraud on the government (although not enforced by Sohigian) by requiring silence and withholding of evidence. Second, Allen was not so limited. Defendants agreed not to communicate to "third persons, including prospective employers," not just state agencies, that Plaintiff was dishonest, etc. The complaint stated: "Communicating to **numerous** persons including prospective **employers** . . ." Id. at p. 165.

[27]/

Scientology claims Brown vs. Freese (1938) 28 Cal.App.2d 608, 83 P.2d 82 only held specific performance of a valid confidentiality agreement to be "uncertain." Brown held void an agreement to "remain faithful to her duties as a friend," meaning not to reveal information reflecting on the "honesty and integrity" of a deceased husband. As in Allen, the court stated:

"A bargain that has for its consideration the non-disclosure of discredible facts...is illegal." Id. at p. at 618."

Amazingly, Scientology argues that Mary R., supra, "provides no support" for Armstrong's position. It claims the court "considered the balance which should be struck" for non-parties seeking to open a sealing order on the file. Scientology claims the appellate court set the "sealing order" aside because it prevented the Division of Medical Quality from carrying out its "statutory obligation to discipline misconduct of physicians." First, we point out that the subject contract does the same herein (although the requirement not to speak to government agencies was not enjoined). Second, Scientology's description of Mary R. is fiction.

There was no "balancing" test. Nor was the subject just a "sealing" order, but an agreement that prevented the Plaintiff from discussing the allegations with the B.M.Q.A. The court

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[27] The court ruled the contract unenforceable rather than splitting off portions relating to government and defendants as Judge Sohigian did.

called the order **"giving judicial stamp of approval to a ploy... "** Id. at p. 316. Nor was its ruling limited to regulatory agencies.

> **"The stipulated order of confidentiality is contrary to public policy, contrary to the ideal that full and impartial justice shall be secured in every matter...we believe it clearly improper, even on stipulation of the parties, that the court should issue an order designed not to preserve the integrity and efficiency of the administration of justice...such a stipulation is against public policy, similar to an agreement to conceal judicial proceedings and to obstruct justice.**

Ibid.

After this statement the court added, **"Moreover, in light of the statutory obligation of division to investigate..."** Id. at pp. 316-17.

The **"moreover"** phrase indicates the court thought the statutory obligation was additive to the prohibition requiring that **"impartial justice shall be secured in every matter."**

Scientology claims Eggleston v. Pantages, supra, is distinguishable because it wronged others who had an interest in an ongoing case in which the settler was a party.

Isn't that exactly what is happening here? There are cases ongoing involving Scientology and its associates, and undoubtedly there will be the same in the future.

Scientology makes no mention of People v. D. Richard Pic'l, supra, 31 Cal.3d 731. There, the subject settlement, as in the herein contract, required avoidance. And like herein, the agreement was one to refuse to testify by doing **"everything within my power...**

"There is, of course, no talismanic requirement that a Defendant must say 'don't testify' or words tantamount thereto ... as long as his words or actions support the inference that he... sought to prevent or dissuade a potential witness from attending upon a trial... a Defendant is properly held to answer (citations)"

Id. 31 Cal.3d at p. 740.

In Pic'l, the crime was a "bribe" to "dissuade" a party from attending. Id. at p. 737. This case did arise in the context of a criminal prosecution, but Penal Code section 138 makes it a crime to form **"any understanding or agreement"** a person shall **"not attend"** trial. The Penal Code applies to **any** trial or judicial proceeding, not just criminal.

Nor does Scientology mention Williamson v. Superior Court (1987) 21 Cal.3d 829, 148 Cal. Rptr. 39, which also invalidated agreement to suppress evidence on public policy grounds. Id. at p. 836. The court referred to the Penal Code, but the case arose in a **"civil context."** The California Supreme Court stated:

"[enforcement] would be to condone defendant's concealment of evidence, in direct contravention of this court's insistence that neither party to such an agreement should receive the aid of the court in effectuating such an illegal scheme. This court cannot place its imprimatur upon planned stratagems of purchased suppression of evidence."

Id. at p. 838.

Scientology also omits comment on United States Supreme Court decision in Keystone Co. vs. Excavater Co. (1933) 290 US 240, 247:

"While it is not found, as reasonably as it may be inferred from the circumstances, that from the beginning it was Plaintiffs' intention through suppression of Clutter's evidence to obtain decree in the Byers case for use in subsequent infringement suits against these

Defendants and others, it does clearly appear that the Plaintiff made the Byers case a part of its preparation in these suits. The use actually made of that decree is sufficient to show that Plaintiff did not come with clean hands with respect to any cause of action in these cases."

VIII. ENJOINING A WITNESS FROM VOLUNTARILY COOPERATING OR TESTIFYING FOR A PLAINTIFF IN A PROCEEDING AGAINST SCIENTOLOGY IS AGAINST PUBLIC POLICY.

Applying his "balancing test" Judge Sohigian declared Scientology was entitled to a limited injunction preventing Armstrong from assisting a "plaintiff." (1716)

Scientology acknowledges Judge Shohigian took into consideration litigators' "contractual freedom" versus "cognizance of public policy limitation on the freedom of contract, **in particular that private parties may not make agreements which would undermine the goal of attaining full and impartial justice through...informed civil and criminal proceedings and arbitration."** (RB 11) (1716) Thus, Scientology concludes, Judge Sohigian narrowly tailored his prohibition to exclude everything that might affect a proper functioning of the judicial system. We submit that Judge Sohigian erred in failing also to exclude contractual hinderance on a plaintiff's ability to present his case.

The cases cited above, indicate public policy was served by administration of **civil justice** as well as criminal. For the administration of civil justice to serve the public, it must apply equally to plaintiffs and defendants. If not, if such

clauses are incorporated into settlement agreements everywhere, these results may occur:

a. Law and motion or injunctive relief is sought. The responding party lacks time for deposition, so needs from Armstrong a Declaration to supply relevant information. The Injunction prohibits it.

b. Armstrong voluntarily attends a trial. Counsel for adverse Scientology Plaintiff spots him and calls him to the stand. The Scientology lawyer interjects, "Mr. Armstrong, if you answer, we will go back to Judge Sohigian and ask you be held in contempt as you were not subpoenaed." The trial judge says, "Mr. Armstrong, if you fail to answer, I will hold you in contempt."

c. An adverse Scientology Plaintiff outside California learns of Armstrong's existence prior to trial. Armstrong cannot be subpoenaed to attend a trial out of state, so adverse Plaintiff loses a witness. [28]/

d. An adverse Plaintiff calls Armstrong to the stand. He is questioned for multiple days because the attorney does not know what Armstrong has to say due to the Injunction. [29]/

e. Unable to interview Armstrong in private, adverse Plaintiffs will have to depose him for multiple days at great expense with Scientology attorneys looking over their shoulders, objecting to each question, and perhaps going to court for protective orders and arguments.

f. To combat an upcoming motion, an adverse Plaintiff takes a quick deposition of Armstrong on a few points. When more information is needed, the litigant faces the "one-deposition" rule.

At best, Scientology purchased hinderance and expense for

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[28] A deposition adds greatly to expense of litigants. Nor is a video-taped deposition as effectual as a live witness.

[29] The court, most assuredly, would ask why the witness was not interviewed. "Well, your Honor, we tried, but he was paid money not to speak to us, and there is an injunction. We are sure he has relevant testimony, we just don't know what it is."

any adverse litigant. [30]/ Public policy is violated by contracts intended to so hinder an adverse litigant in presenting his case.

Our civil system is more than just redress. It is a fact-finding tool, laying precedents for our lives, businesses, and affairs. It governs product liability, due care, and safety. Statutes provide civil liabilities to deter violations. To enforce public policy and deterrence, we have punitive damages. "Class actions" help large segments of the public. Civil litigation establishes safeguards and presents warnings to individuals, civil, and governmental entities who violate the rights of others. [31]/

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[30] The undersigned, Paul Morantz, personally experienced the potential for injustice that exists. A former Scientologist (Corydon), relying, in part, on information supplied by a former top Scientologist, stated to the media that a Scientology publicist was trained to lie. When the Scientologist sued for defamation, the undersigned contacted the top Scientologist to get verification of the information he gave the Defendant. However, the Scientologist had signed a similar agreement and refused to talk, fearing Scientology retribution. And this individual did not reside in California.

[31] Remember the Pinto. What if Ford had settled with its chief engineers requiring them never to voluntarily disclose or cooperate with any injured persons claiming they were harmed by explosions from rear end collisions. Does suppression of this information serve the public?

Scientology, as well as many other self-proclaimed religions, some alleged, some valid, actively recruits and seeks to persuade others to follow its heir thinking and practices. In some cases, it requires from its followers large sums of money and personal commitment. Plaintiff suits for harm could succeed in bringing out valuable information that the public needs to know. Punitive damage awards eventually stopped Synanon's "holy war." Might there have been more public awareness through trials against People's Temple a decade ago, or in more recent history,

(continued...)

Injunction increases trial court burdens and taxpayer costs. Even when insurance, increased defense costs equate to higher premiums, particularly if adopted by the defense bar. [32]/

IX. SCIENTOLOGY FAILS TO CITE CASES LEGALLY UPHOLDING THE INJUNCTION

Scientology relies primarily on the companion cases of Philippine Export and Foreign Loan Guarantee Corp. v. Chuidian (1990) 218 Cal.App.3d 1058, 267 Cal.Rptr. 457 and Chuidian v. Philippine National Bank (C.D.Calif. 1991) 734 F. Supp. 415.

However, what distinguishes both cases appears in the very quotes cited by Scientology.

"Agreement to keep the settlement private was not an agreement to **suppress evidence and is not illegal...Chuidian's agreement did not suppress nor withhold evidence from the court or from any party to the law suit . . .**" Philippine, supra, 218

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[31](...continued)
the Branch Davidians.
Before engaging in Scientology services, wouldn't one like to know about "Fair Game," "Freeloader Debt" and the "Rehabilitation Project Force". Certainly it is possible that a jury verdict could stop such anti-public policies. Wollersheim, supra (denying Scientology First Amendment protection due to said policies.)

[32] Judge Sohigian's Injunction is vague. Does the Injunction apply to governmental agency in a civil action? Why should a private individual be exposed to hinderance and increased expenses, but not a governmental agency?
What happens when a plaintiff sues Scientology but thereafter becomes a cross defendant?

Cal.App.3d at 1082-83. (cited in RB at p. 18).

"Many lawsuits are settled for the sole purpose of avoiding the public disclosure of embarrassing or private information." Such is not illegal because it **does not call for the suppression of evidence at trial proceedings...** Chuidian, supra, (R.B. 18). [33]/

Scientology does not discuss the fact situations of these cases. And for good reason. The cases involved Philippine trying to set aside a settlement on charges of coercion and illegality. Chuidian sued Philippine which was a government owned entity. At the time Ferdinand Marcos was President. Philippine alleged that Chuidian had notified Marcos that trial would result in information coming out that Marcos had been attempting to take over Chuidian's company. Marcos' power was teetering, and he was concerned about further political blows. Philippine states Marcos ordered Philippine to settle. There was a separate agreement made with Marcos where Chuidian promised not to comment on Marcos' involvement and would supply an affidavit denying it.

Chuidian knew his own affidavit would be perjurious, so he had an executive who had no knowledge of Marcos' acts provide his affidavit "based on his knowledge of the circumstances."

Citing Williamson, Allen, and Brown, supra, the court noted

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[33] Courts are referring to the fact that once there is a settlement there is no trial which may disclose embarrassing information. This is different from settlement agreements which are designed to prevent other litigants from being able to obtain and present information.

that this was not a case to keep evidence from **litigation.** It was not an agreement to "suppress evidence..." The court noted returning copies of depositions did not suppress evidence, and that records of court and depositions remain available to the public. As to the corporate executive's declaration, the court noted his statement was true by his knowledge and that while this may be "offensive" it is not per se illegal. There was nothing in the agreement that required Chuidian or anyone else to not voluntarily assist any other litigants or avoid voluntary testifying.

In Chuidian, supra, Philguarantee, which was not a party to the other litigation, tried to set aside the settlement on the same grounds. The court noted the agreement between Marcos and Chuidian did not affect the validity of the settlement agreement between Chuidian and Philguarantee. The court found that Philguarantee was not controlled by Marcos and made its own decision. As to the agreement, the court noted, it did not direct evidence be kept out of litigation. "The information was of **political significance** to Marcos and was not legally relevant to litigation."

The court declared the clause guaranteeing no criminal prosecution illegal, citing Bowyer vs. Burgess 54 Cal.2d 97, but ruled this portion was severable. "If contract has several distinct objects of which one is lawful, the contract is valid

and enforceable as to the lawful object." [34]/

The closest Scientology comes to authority is the citation of a federal trial Judge ruling in Hoffman vs. United Telecommunications, Inc. 687 F. Supp. (1512) (D. Kansas 1988).

First, the case does not deal with California law. Our courts decide what is California public policy.

Second, as stated below, even the judge who wrote the opinion did not like his ruling. Not surprisingly, it has never been cited, let alone approved, in any subsequent case.

In Hoffman, the court did apply a "balancing" test to carve an exception from what otherwise appeared to be a contract against public policy. The court approved a settlement of the original plaintiff in a 12-year-old discrimination case in which the EEOC later joined. The contract required the Plaintiff not to counsel or assist the remaining Plaintiffs in the lawsuit.

The court noted in EEOC vs. United States Steel Corp. 671 F. Supp. 351 a similar agreement not to "counsel or assist" was held

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[34] We submit the same applies here. A settlement was made dismissing a cross complaint for payment of money. The illegal clauses are not tied to this and thus, are void.

We suggest, however, the legal thinking in the Chuidian cases was faulty. Knowingly supplying an affidavit from an ignorant witness stating known false information for any purpose should be contrary to public policy, not merely offensive.

Political systems have enough problems, without agreements to suppress information from the public that may affect voters' decisions. Our Constitution is based upon a government run by the people and has as its premise that the free exchange of ideas will lead to right selections; that premise falls, when information is suppressed from free speech in the marketplace of ideas whether it be in the press or by litigation.

void as it could be interpreted as prohibiting persons from giving EEOC any assistance. "The mere possibility would deter individuals from participating in any ADEA claim, is sufficient to render it in violate of...public policy." It created fear in "discussing situation with EEOC."

In Hoffman, the court felt that the Plaintiff was entitled to settle her ancient case, and since she had already been deposed at great length her information was known to the other Plaintiffs, who could subpoena her. [35]/ There was no prohibition other than the instant litigation in which she had already testified.

In conclusion, the judge wrote, **"As a final comment, the court certainly does not intend to encourage settlements such as the one in this case."** It rests "solely on the peculiar facts of this lawsuit, and **even a slightly different factual situation could greatly affect the courts' disposition on the merits...simply put...settlement...limiting the Plaintiff's cooperation in culminating the 12 year old investigation is not void as against public policy."**

It is obvious the court did not want to set aside the settlement, and found the other parties were really not hurt by the unique status of pending litigation. But we submit it really

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[35] This is in contrast to our situation. Litigants in other courts would not know contents of Armstrong's knowledge and would be denied the opportunity to interview him. Further, if he is out of state, he is beyond subpoena power.

stated an exception that is not valid. [36]/ The court should have severed the unlawful portion of the contract and upheld the balance, i.e., payment in return for dismissal. [37]/

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[36] By example, the EEOC may have learned of information about which the Plaintiff was not deposed. EEOC should not be forced to embark on a fishing examination of the plaintiff during trial, but should be allowed to prepare. Also, such an order does not cloak the court with the aura of impartiality, if it allows one party to purchase silence and non-cooperation of a witness.

That the court stretched the facts is also apparent from its ruling that the clause requiring plaintiff's counsel not to participate on behalf of other claimants did not violate public policy because other claimants already had counsel. Not all counsel have the same knowledge and legal skills. A claimant should be entitled to change or associate lawyers at any time. Certainly we should encourage people to select attorneys with expertise in certain areas, and even encourage attorneys to make referrals to lawyers with better knowledge in specific areas. If plaintiff indeed had been in the case for 12 years, we can assume her counsel has such knowledge. One should not be able to purchase stones of silence in order to erect a wall of obstruction between claimants and a knowledgeable attorney.

[37] Scientology also cites Wakefield v. Church of Scientology of California, 938 F. 2nd. 1226 (11th Cir. 1991) stating it involved a settlement agreement "virtually identical" (R.B. 20) with agreement at issue here.

As Judge Sohigian noted at the hearing, the opinion failed to state what the terms of the settlement agreement were, and only states it is a "confidentiality" agreement.

In fact, Wakefield was not represented by counsel and did not participate in the appeal, which was brought by St. Petersburg Times. Nor is it California law. See declaration of Ford Greene. (949-51) During the course of oral argument on the injunction below, Judge Sohigian determined that Wakefield was not applicable to the instant case because the legality of the agreement was not addressed in that opinion. (1616-19)

X. THE FACT ARMSTRONG MUST RESPOND TO A SUBPOENA IS IRRELEVANT TO PUBLIC POLICY VIOLATION

Scientology argues that there was no obstruction because a witness can be subpoenaed. [38]/ A party in litigation has a constitutional right to a fair trial, to interview witnesses who want to be interviewed.

What if Scientology went to witnesses and said, "Here's $10,000 each to get out of town." Is it less an obstruction because defendants have subpoena power? Does it matter that the obstruction is part of a settlement?

That the contract says Armstrong may testify when subpoenaed (but avoid process), is surplusage. Even if the agreement said, "You cannot testify," Scientology does not have power to override a subpoena. In cases cited, the witness always still could have been subpoenaed. It was an obstruction to agree **"to do everything you can"** to avoid testifying.

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[38] While Scientology, hoping to have the contract upheld, takes that view here, they have taken the opposite position when a subpoena has actually been issued. When Armstrong was subpoenaed to deposition in Corydon vs. Church of Scientology International Inc. LASC #C694401, Scientology filed a motion to prevent the taking of the deposition, claiming that the purpose of the settlement agreement was to keep information known by Armstrong strictly confidential. Scientology lied again, stating the non-disclosure obligations were "insisted" by "all" parties and thus to allow Armstrong to testify would be a breach of the existing "peace...(1294-1305 discussed in the Opening Brief at 15)."

XI. THE SUPPRESSION OF EVIDENCE OF CONDUCT VIOLATES THE STATE'S COMPELLING INTEREST IN PROTECTING ITS CITIZENS FROM COERCION AND HARM IS AGAINST PUBLIC POLICY BECAUSE SUCH SUPPRESSION ASSISTS SCIENTOLOGY'S ESCAPE FROM LIABILITY, IMPEDES THE CITIZENRY'S RIGHT TO REDRESS, AND SKEWS THE INTEGRITY OF THE ADMINISTRATION OF JUSTICE

A. Scientology's Conduct Has Been Found To Be Too Outrageous To Be Protected Under The Constitution And Too Unworthy To Be Privileged Under The Law Of Torts

It has been judicially established that the State of California has a police power interest in controlling the harmful consequences of a cult's coercive practices. Indeed, "when a person is subjected to coercive persuasion [brainwashing] without his knowledge or consent . . [he may] develop serious and sometimes irreversible physical and psychiatric disorders, up to and including schizophrenia, self-mutilation, and suicide." Molko v. Holy Spirit Association (1988) 46 Cal.3d 1092, 1118, cert. denied, (1989) 109 S.Ct. 2110. Thus, the "state clearly has a compelling interest in preventing its citizens from being deceived into submitting unknowingly to such a potentially dangerous process." Ibid. Scientology's use of "auditing" and "disconnect" practices are a form of brainwashing, Wollersheim v. Church of Scientology, supra, 212 Cal.App.3d at 880, and as to such coercion, "the state has a compelling interest in allowing its citizens to recover for serious emotional injuries they suffer through religious practices they are coerced into accepting. Such conduct is too outrageous to be protected under

the constitution and too unworthy to be privileged under the law of torts." Id. at 897. Scientology's conduct is so outrageous and unworthy of privilege or protection that it has been compared to a modern day "inquisition" because "there are some parallels in purpose and effect" with the horrible Christian practices of yore. Id. at 888. [39]/

> "Fair game" like the "inquisition" targeted "heretics" who threatened the dogma and institutional integrity of the mother church. Once "proven" to be a "heretic," an individual was to be neutralized. In medieval times neutralization often meant incarceration, torture and death. [Citation.] As described in the evidence at this trial the 'fair game" policy neutralized the "heretic" by stripping this person of his or her economic, political and psychological power."

Id. at 888-89.

In Armstrong I, Judge Breckenridge found Scientology to be of the same character as described by the courts of appeal in Wollersheim and in Allard.

> As indicated by its factual findings, the court finds the testimony of **Gerald** and Jocelyn **Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Homer Schomer to be credible, extremely persuasive** and the defense of privilege or justification established and corroborated by this evidence . . . **In all critical and important matters, their testimony was precise, accurate, and rang true.** The picture painted by these former dedicated Scientologists, all of whom were intimately involved [with the highest echelons of power in] the Scientology Organization, is on one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH [L. Ron. Hubbard], and his ideas. Each has manifested a waste and loss or frustration which is incapable of

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[39] Certainly the recent and tragic immolation in Waco, Texas, searingly underscores the immediacy of the harms presented by the absolute control exercised by cults, including that exercised by the Scientology cult.

description. Each has broken with the movement for a variety of reasons, but at the same time each is still bound by the knowledge that the Church has in its possession his or her most inner thoughts and confessions, all recorded in "pre-clear folders" or other security files of the organization, and that the **Church or its minions is fully capable of intimidation or other physical or psychological abuse if it suits their ends. The record is replete with such abuse.**

. . .

In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization is clearly **schizophrenic and paranoid**, and this bizarre combination seems to be a reflection of its founder LRH. **The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements.** The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile. [40]/

Armstrong submits that it is against public policy for Scientology to contract to suppress evidence and make it practically unavailable to the victims of its retributive and

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[40] Judge Breckenridge noted Scientology's fraud against the public, history of hiding evidence, including shredding evidence (480), and that Scientology engaged in "a somewhat sophisticated effort to suppress (Howard Schomer's) testimony . . . it is abundantly clear they sought to entice him back into the fold and prevent his testimony. (493)

Some of the valuable testimony of Armstrong which the contract seeks to suppress appears also in Judge Breckenridge's decision. Armstrong located documents in the archives of Scientology's founder, L. Ron Hubbard, indicating that representations made by Scientology and Hubbard were lies. When he tried to prevent further deceit on the public, Armstrong was ordered to submit to a "security check." (487) He was declared a "suppressive person," was falsely accused of crimes, and made subject to Scientology's "Fair Game Doctrine" -- may be "tricked, cheated, lied to, sued, or destroyed." (491) Armstrong had extensive knowledge of the "covert and intelligence operations" carried out by Scientology against its enemies. (492) He was then harassed, followed, surveilled, assaulted, struck by a car, attempted to be hit on the freeway, and trespassed upon by Scientology operatives. (Ibid.)

inquisitional practices. Would it not be against public policy for the Ku Klux Klan to pay off its former officials in the form of contracts so as not to voluntarily testify or assist individuals who were suing it, or contemplating the same, for the violation of their civil rights? Why is it that Scientology is able to silence its former officials through the payment of money and in the guise of a contract? What makes Scientology so different? Is the value of settlement so great because Scientology has developed a reputation for creating nightmare log-jams in the judicial system such that settling its litigation outweighs the elimination of competent testimony in other litigation as the price of obtaining such settlement?

XII. THE TRIAL COURT CANNOT REWRITE THE CONTRACT TO ELIMINATE ITS UNLAWFUL PURPOSE

To enforce part of an illegal contract it must be looked to see if the agreement is "entire or separable." The key is if money consideration is proportional to each of many items to be formed. Brown v. Freese, supra:

> "Whether a contract was entire or separable depends upon its language and subject matter, and this question is one of construction to be determined by the court according to the intention of the party."

It is essential that a contract has a lawful object. Civil Code § 1596. If there is a single unlawful object, it is void. Civil Code § 1598. If any part of the consideration is unlawful, it is void. Civil Code § 1608. Only when a contract

has clearly severable stipulations for each of which there is a separate consideration expressed, and there is no reason to suppose the expressed consideration for one form a part of consideration for the other, can the contract be separated. 14 Cal.Jur.3d, Contracts, p. 336; McVicker v. McKenzie, 136 Cal. 656. Only if the court can lay illegal consideration to a specific portion of the contract may it enforce other parts. Keene v. Harling, 61 C.2d 318.

Judge Sohigian exceeded his jurisdiction in issuing the injunction because he re-wrote the agreement in order to eliminate what he viewed to be the illegal consideration. He had no authority to do this. All that Judge Sohigian was entitled to do was to determine whether or not the contract was severable such that the illegal portions could be discarded and the good parts kept. It has long been the law in California that

> When the transaction is of such a nature that the good part of the consideration can be separated from that which is bad, the Courts will make the distinction, for the . . . law . . . [divides] according to common reason; and having made that void that is against law, lets the rest stand. [Citation]. Thus, the rule relating to severability of partially illegal contracts is that a contract is severable if the court can, consistent with the intent of the parties, reasonably relate the illegal consideration on one side to some specified of determinable portion of the consideration on the other side.

Keene v. Harling, supra, 61 Cal.2d at 320-21; Brown v. Freese, supra.

> It is well settled that agreements against public policy and sound morals will not be enforced by the courts. It is a general rule that all agreements relating to proceedings in court which involve anything inconsistent with [the] full and impartial course of justice therein are

void, though not open to the actual charge of corruption. Eggleston v. Pantages (1918) 103 Wash. 458, 175 P. 34, 36; Maryland C. Co. v. Fidelity & Cas. Co. of N.Y. 71 Cal.App. 492 Fong v. Miller (1951) 105 Cal.App.2d 411, 414, 233 P.2d 606. "In other words, where the illegal consideration goes to the whole of the promise, the entire contract is illegal." Witkin, § 429 at 386; Morey v. Paladini (1922) 187 Cal. 727, 738 ["The desire and intention of the parties [to violate public policy] entered so fundamentally into the inception and consideration of the transaction as to render the terms of the contract nonseverable, and it is wholly void."].

Although Judge Sohigian could have separated out and severed the illegal parts from the contract, he did not do so. Since, instead, he improperly re-wrote the contract, he acted outside of his jurisdiction, thus rendering his order void.
Thus, Judge Sohigian's reformation of the contract was improper.

XIII. ARMSTRONG DID NOT WAIVE HIS CONSTITUTIONAL RIGHTS

Scientology concedes that in the civil area of law, courts "do not presume acquiescence in the loss of fundamental rights" D.H. Overmeyer Co. v. Frick (1972) 406 US 174, 186, and that in order for a waiver to be voluntary, knowing and intelligent, it must be "an intentional relinquishment or abandonment of a known right or privilege." Johnson v. Zerbst (1938) 304 US 458, 464. Even Scientology's videotape of the signing of the contract does

not show him being advised that he was waiving his First Amendment right to Free Speech, Near v. Minnesota (1931) 283 US 697, to freedom of association with others, NAACP v. Alabama (1958) 357 US 449, or the right to work or to practice a profession. Endler v. Schutzbank (1968) 68 Cal.2d 162, 169.

Moreover, nothing indicates that Armstrong was contracting to be the object of slander in the face of which his silence would be required on penalty of ultimately being jailed for contempt should he decide to fight back. [41]/

Snepp v. United States (1980) 444 US 507 is distinguishable from the case at bar. Snepp justified a prior restraint on a former CIA employee's ability to publish information violating a confidentiality agreement and without CIA prepublication review. The restraint on speech in Snepp was justified on the basis of national security. There is no such interest at stake here. Indeed, in light of the risks attendant upon cultic indoctrination, the values militate in favor of disclosure.

In re Steinburg (1983) 148 Cal.App.3d 14 is inapposite. In that case a movie producer desired to make documentary movie of children who were wards of the court. The producer obtained

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[41] Pursuant to Evidence Code § 452 (d), Armstrong requests this Court to take judicial notice of the fact that on December 31, 1992, in the case below, Scientology sought and obtained an Order to Show Cause re Contempt against Armstrong for his alleged violations of the injunction at issue. Armstrong also requests this Court to take judicial notice of the fact that the Superior Court refused to proceed on the contempt issue pending this Court's determination of the issues presented in this appeal and that all proceedings below have been stayed pending appeal.

permission to do so from court and could not have made the movie unless court gave that permission. He agreed to the court's imposition of the condition that the film would not be published unless the court could review it in order to determine whether any of the content would be detrimental or harmful to the children who its wards. The producer refused to abide by the agreement and justified his refusal on First Amendment grounds.

In the case at bar the justification for the restraint is not whether disclosure would be harmful to individual within the protection of the court. In our case there is a striking absence of justification. All that Scientology submits is that because it claims to have paid for silence, it is entitled to it. Although Scientology ignores the fact that the silence is designed to bury egregious misconduct, the Court must recognize the nature of the information that is sought to be suppressed.

ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, unlike our case, did not argue "that the nondisclosure agreement is unenforceable because its object or consideration is illegal." Id. at p. 320.

In any event, since Armstrong did not waive his rights, Scientology's cases simply don't apply.

XIV. CONCLUSION

It is clear the court cannot give the stamp of judicial approval to a ploy aimed at suppressing evidence, or hindering the ability to obtain and present evidence. It matters not whether the adverse-Scientology party is governmental or private, plaintiff or defendant.

Nor is any order proper that keeps from the public relevant information relating to matters of public importance. Krause v Rhodes, (6th Cir 1982) 671 F.2d 212 denied a protective order re discovered documents relating to the Kent State shooting, the court taking judicial notice of turbulence of 1960's, war in Southeast Asia, and importance to historians and the media. Scientology has a history of abuse, literally having sought to outright destroy its "enemies." Such behavior occurring in cult-like environments is not unique as recent events in Waco show. Tragically, it part of the everyday fabric of the society in which we are living. The public needs knowledge for protection, outweighing Scientology's need for protection through silence.

Armstrong has already spoken. Scientology acknowledges his prior testimony, declarations and interview. Once information is placed in the public domain, it cannot be recalled. Seattle Times Co. v. Rhinehart (1984) 104 S.Ct. 2199; Coalition Against Police Abuse v. Superior Court (1985) 170 Cal.App.3d 88, 216 Cal Rptr 614.

Scientology often speaks with a forked tongue. The public

cannot depend on its trustworthiness when evaluating its recruitment pitches and the public is entitled to know. When redress is sought through our judicial system, there should be no unfair hinderance; particularly by that purchased by Scientology.

This agreement has lived its seven years. It is time to end the fear of its enforcement.

Respectfully Submitted,

Paul Morantz

Date

Paul Morantz

5/11/93

Date

Ford Greene

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

APPELLANT'S REPLY BRIEF

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

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[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: May 11, 1993